

PROCEDURAL GUIDELINES
for the
VIRGINIA CLEAN WATER
REVOLVING LOAN FUND

February, 2015

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General Overview

Introduction

The Virginia Clean Water Revolving Loan Fund (Fund) was established as a renewing source of low-interest loan funding for improvements to publicly-owned wastewater systems. Initially, funds are being provided through appropriations from both the federal and state governments. The Fund is separate, permanent, and perpetual with all principal and interest repaid into the Fund used to finance other projects. The State Water Control Board (SWCB) is responsible for developing the policies and procedures for the Fund, determining who will receive funds, at what interest rates and terms, and for ensuring that administration of the Fund complies with applicable federal and state policies, statutes, and regulations. The SWCB has delegated responsibility for management of the day-to-day operations of the Fund to the Clean Water Financing and Assistance Program (CWFAP) of Department of Environmental Quality (DEQ). The Virginia Resources Authority (VRA) serves as the financial manager of the Fund and negotiates individual loans, makes disbursement to loan recipients, collects loan payments, and invests any uncommitted Fund monies.

To ensure compliance with program policies and requirements, DEQ offers assistance to loan recipients from the time of loan application to project completion and performance certification. The Loan Program Guidance Packages included in these Procedural Guidelines are intended as the first step of this assistance by providing the following information:

Virginia Revolving Loan Fund policies and procedures regarding allowable expenses and the flow of Fund monies.

Loan and construction management requirements and recommended methodologies for complying with these requirements.

CWFAP activities related to assistance and program oversight throughout the project.

This general overview provides a summary of the activities involved in the planning, design, and construction of a Fund project including program requirements and recommendations for the successful completion of a project. Individual Loan Program Guidance Packages will be referenced for additional details on specific topics.

Project Management

Managing a successful wastewater construction project is a major undertaking. For many loan recipients, the project will be one of the largest (if not the largest) in which they have been involved. Good project planning and management is essential and will likely result in a successful construction project.

A key to good project management is to designate a project manager to represent the loan recipient in all loan and project-related activities. This person should be an employee of the loan recipient, available to deal with project matters, and given the necessary authority to oversee and coordinate all project activities. The project manager leads the project management "team" that provides the administrative, technical, financial, and legal support for the project.

The size and structure of the project management team will depend on the size and complexity of the project, but the required functions are the same whether the project is small or large. These functions include:

Administration - Planning; application completion; organization; scheduling; record keeping; filing; procurement; change order processing; claims management; overall coordination and management.

Technical - Preparation of engineering documents; cost estimating; construction inspection and oversight; change order review; project start-up and O&M training; performance certification; overall technical support.

Financial - Identifying and arranging financing; budgeting; accounting and reporting; cash flow projection; processing receipts and disbursements; disbursement request preparation.

Legal - Contract development, review and interpretation; procurement review; negotiation; advice on land, easement, permit, and license and title acquisition; bond counsel; litigation; overall legal support.

The loan recipient should either have or acquire qualified staff to carry out these support functions. The administrative functions are typically carried out by the project manager, although the loan recipient may elect to delegate some duties to other employees. The technical functions are performed by the consulting engineering firm hired by the loan recipient, and this selection is extremely important to the success of the project. Financial functions may be partially assumed by the project manager, with certain financing and accounting duties carried out by other staff or contracted out to a professional accountant. Legal functions are normally carried out by a designated attorney on the staff of or retained by the loan recipient.

These procedural guidelines provide a number of Loan Program Guidance Packages (PG's) relating to project management. Essential elements in the management of a loan-funded project include an understanding of what costs are allowable under the loan program and how the project's cash flow will be handled. *Allowability of Expenses* (PG #1) and *Fund Disbursement and Loan Repayment* (PG #2) discuss these two topics. A *Financial Management System* for accountability of loan monies is discussed in PG #3. *Procurement* (PG #4) and *Use of Equipment/Purchase of Materials* (PG #5) provide information regarding how goods and services involved in the project must be obtained in order to comply with program requirements and State law. *Filing and Record Keeping* (PG #6) discusses the objectives and recommended organization of those systems.

Planning and Design

The first step in a wastewater project is the development of a Preliminary Engineering Proposal (PEP) or planning document, discussed in *Preliminary Engineering and Environmental Review* (PG #7). This document is normally prepared by the consulting engineering firm hired by the loan recipient. To be eligible for funding, please note that procurement of professional engineering services must be in accordance with the Virginia Public Procurement Act (*Procurement* PG #4). The PEP assesses the current situation, projects future needs, develops alternatives, assesses the environmental impact of the alternatives (for those projects not categorically excluded) along with the monetary costs, and presents a selected plan.

The planning phase of the project is extremely important because its goal is to set forth the most cost-effective, environmentally sound, and implementable project for the loan recipient. For projects involving

treatment works, the DEQ Regional Office should be contacted early in the planning stage in order to ensure that effluent limitations are current and in place by a VPDES permit for the facility. The planning document should be reviewed and approved as outlined in PG #7 before the project moves into the design stage.

The design phase of the project, which involves the development of plans and specifications for the facilities to be constructed, is the next step. Sewage Collection and Treatment (SCAT) regulations detail the State standards which must be met in the design. Regulations have been amended to give DEQ the sole plan and specification review responsibility for sewerage systems and wastewater treatment plans. Close contact with the regional offices of the DEQ is helpful in reducing delays at this stage. In addition to SCAT requirements, the specifications must include our VCWRLF Contract Insert including the Davis Bacon Act, and American Iron and Steel requirements, and the Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) goals, as discussed in *Affirmative Action and Nondiscrimination Provisions* PG #8.

Upon completion, the plans and specifications must be submitted to CWFAP for review, comment, and final approval. The CWFAP review will focus primarily on the bidding requirements and contract documents, and their conformance with program requirements. Otherwise, processing of the plans and specifications will proceed as outlined in the SCAT regulations.

Construction

Upon issuance of the Certificate to Construct, and receipt of approval from the CWFAP, the loan recipient may proceed to advertise for bids for construction. A final check of the Department of Labor website for any updates of relevant wage decisions should be made at this time as discussed in *Payroll Review (Davis Bacon Act)* (PG #11). The procurement requirements called for in the Virginia Public Procurement Act must be followed in procuring engineering or construction contracts (PG #4). A pre-bid conference is recommended so that the engineer can present the project to bidders and answer any questions they may have. It is also recommended that the loan recipient select and begin discussions with their bond counsel at this time. Prior to the award of the contract, the loan recipient must submit to CWFAP evidence of bid advertising, the bid tabulations, bid selection documentation, the bid bond, the low bid proposal, adequate documentation of MBE/WBE solicitation/intended utilization, and the American Iron and Steel Initial Certification Statement (PG #12). At this time, the final project budget should be finalized and presented to CWFAP and VRA. Following satisfaction of all closing and program requirements, loan closing can occur.

Prior to construction, the project manager should plan and implement record keeping, filing (PG #6), and financial management systems (PG #3) for the project. The loan recipient should also provide a disbursement schedule to VRA and CWFAP at this time. The disbursement schedule should be updated anytime it is not within 10% of actual disbursements. The project manager should ensure that all necessary permits have been obtained, that the contractor's bonding and insurance is in place, and that all necessary land and easements are secured. These and other topics should be discussed in the *Preconstruction Conference* (PG #9) which should be held after contract award and prior to the beginning of construction. CWFAP staff should be included in the Preconstruction Conference. At the time of the Preconstruction Conference, CWFAP staff may meet separately with the loan recipient to discuss project construction as it relates to the Fund especially regarding provisions necessary to satisfy Davis Bacon and Related Acts, and American Iron and Steel requirements.

During construction the loan recipient must provide for full time project inspection unless otherwise approved by CWFAP. Inspections, carried out by staff of the loan recipient's consulting engineering firm or hired directly by the loan recipient, will keep the loan recipient aware of construction progress, quality, and

conformance with plans and specifications. Inspections are very valuable in claim resolution, change order negotiation, and ensuring that payments are made for work-in-place. Loan recipient inspections should be documented with construction progress reports that can be reviewed by CWFAP during on-site monitoring. The loan recipient must document payroll reviews and other Davis Bacon compliance requirements, and American Iron and Steel certifications. The loan recipient should also provide CWFAP with the MBE/WBE Utilization report on a quarterly basis. CWFAP will conduct on-site evaluations to assess project management and construction (*State Construction Oversight*-PG #10).

The loan recipient should submit fully supported disbursement requests, certified by the consulting engineer, to CWFAP and make prompt payments to the construction contractor. The disbursement schedule should be updated to VRA and CWFAP as needed.

The loan recipient should have an established and fully understood procedure to process change order requests from the contractor. The procedure should, at a minimum, involve submission of a fully supported change order proposal from the contractor; an independent estimate of the change order costs from the consulting engineer; negotiation of a fair and reasonable price and time extension, as appropriate; a formal agreement to the contract changes; and notification to CWFAP of all change orders. They will be reviewed for loan eligibility during the on-site evaluations by the CWFAP representative.

Project Completion

Prior to completion of the project, the loan recipient should complete and submit the Operation and Maintenance Manual to the appropriate DEQ Regional Office. As a final step before the construction contractor is released, the project manager should conduct a final walk through the facility with the consulting engineer, the contractor, and other key individuals to ensure that all work has been completed. Once the loan recipient and engineer are satisfied with the project's completion, they should submit the Statement of Completion of Construction referenced in the SCAT regulations, and request issuance of a Certificate to Operate from the DEQ Regional Office (see PG #10). A final inspection by CWFAP should be requested at this time. A Final Reimbursement Request should be submitted at this time with the final contractor invoice, the reconciling change order, and the American Iron and Steel Final Certification Statement. Loan repayments to the Fund will begin in accordance with the Financing Agreement.

Loan Program Guidance Package

ALLOWABILITY OF EXPENSES

The program has been designed so that any cost determined to be reasonable and necessary in the planning, design and/or construction of needed wastewater improvements is allowed. Loan funds can be requested to cover most of the needed expenses for the loan recipient's approved wastewater system improvement program. During application review CWFAP may reduce loan eligibility and the scope and size of a project to insure the greatest financial benefit to as many communities as possible.

Sizing

It is extremely important that the proposed size and reserve capacity for both the treatment facility and interceptor system be supported and justified in the planning stage of the project. Sizing of a system and its appurtenances should be in conformance with established procedures as outlined in the Sewage Collections and Treatment (SCAT) regulations and with generally accepted engineering practices. Generally, the plant capacity should not exceed a 20-year design life and sewer system (*sewer lines, force mains and pump stations*) capacity should not exceed a 50-year design life. CWFAP will reduce the amount of the loan authorized for any project proposing excessive and unjustified reserve capacity.

New Collection Sewer

CWFAP will evaluate loan allowability for new collector sewers on the basis of sewer needs as they relate to the elimination of public health hazards, ground water contamination and other factors related to water quality problems that exist due to the lack of central sewerage facilities in the area. Allowability will be limited to sewer lines including wyes and tees and line stubs for residential connections. Allowability is limited to the area determined to be maintained under municipal ownership. Service laterals from property boundary to structures remain ineligible under the program.

Land and Easement Cost

The purchases of land, easements and/or right-of-ways may be considered allowable costs under the Revolving Loan Program. The eligibility of the purchases will be determined on a case by case basis depending on the necessity of the acquisitions, appropriate size limits, and reasonableness of cost.

Interest

Any interest cost associated with funds borrowed for the planning, design, or construction of the project are ineligible for loan funding.

Changes in Project Scope

Changes in the approved project scope by addendum to planning, design documents, or change orders not attributable to the wastewater improvement project, or involving duplication of effort or work will be

disallowed construction costs. Any cost or expenditure that is determined to be unnecessary and/or unreasonable will be disallowed.

Municipal Operating Expenses

Salaries and other expenses of salaried municipal employees are not allowable expenses for reimbursement under the program. In addition, the use of Force Account Labor is ineligible under the program.

Roadwork

Costs for roadwork will be limited to access roads necessary for and directly associated with access to the facilities and repair work directly associated with the installation of sewer lines.

Loan Program Guidance Package

FUND DISBURSEMENT AND LOAN PAYMENT

Implementation of the Virginia Clean Water Revolving Loan Fund (Fund) is a joint venture between the Department of Environmental Quality (DEQ) and the Virginia Resources Authority (VRA). The staff at CWFAP receives the disbursement requests, conducts a review of the documentation, and forwards the requests to VRA. VRA is the administrator of the Fund and is responsible for making disbursements to loan recipients and collecting loan payments.

Disbursement of Funds

Following completion of the closing process and execution of the financing agreement between VRA and the loan recipient, the disbursement process can begin. The first disbursement of loan proceeds will be made at loan closing. The request can cover costs incurred prior to the loan agreement (such as planning, design, legal and administrative fees, etc.) as long as these costs have been identified previously as part of the approved project's scope-of-work. One time design costs are eligible. Redesign cost are not allowable.

Disbursement of loan proceeds is made on an actual cost basis. The costs must have been incurred prior to submitting the disbursement request. However, the costs may be paid prior to or after receipt of the loan funds by the locality. The request for disbursement is made using Exhibit E (Request for Disbursement) which is a part of the Financing Agreement. The request must also include Schedule 1 to Exhibit E (Schedule 1 to Accompany Requests for Disbursement) and the Certificate of the Consulting Engineer (*all documents enclosed PG #2*). The requests are directed to the DEQ's Clean Water Financing and Assistance Program at the following address with a copy sent to the Regional Project Manager:

Regular Mail:

**Mr. Walter Gills
Clean Water Financing and Assistance Program
Dept. of Environmental Quality
P. O. Box 1105
Richmond, VA 23218**

Overnight or Hand-delivery:

**Mr. Walter Gills
Clean Water Financing and Assistance Program
Dept. of Environmental Quality
629 E. Main Street
Richmond, VA 23219**

The request form must be supported by invoices and/or other documentation of costs incurred for the approved project. Other documentation includes verified copies of the contractor's payment request,

invoices from the engineer and/or lawyer, equipment invoices, etc. Since the financing agreement is with the loan recipient, all disbursement requests must be signed by the loan recipient. Likewise, all disbursements will be made payable to the loan recipient.

The CWFAP will forward all valid (supported) disbursement requests to VRA within 3 working days of receipt. The request will be honored by VRA within 5 days of receipt from the DEQ. **Incomplete or invalid requests cannot be honored on the 3-day basis.** Requests should be calculated on the basis of invoiced or incurred cost less any contractual or specified payment retainage, unless retainage is escrowed.

The loan recipient will receive a disbursement at loan closing for project costs incurred up to that time. This can only be accomplished if a valid disbursement request is submitted to CWFAP **at least two weeks prior to the loan closing date.**

The loan recipient should review its internal payment procedures to accommodate this reimbursement procedure. It is recommended that the procedures allow for payment to the contractor within 30 days from receipt of the contractor's pay request unless other timeframes are designated in the specifications. For example, an invoice received by the 1st of the month could be paid on the 30th of the month. Assuming timely submission on the part of the loan recipient, this procedure should allow for documentation of all costs incurred, enable the CWFAP to concur with the validity of the request, and permit prompt disbursement by the VRA. The purpose of this procedure is to minimize or eliminate the extent to which the loan recipient has to support the payment prior to reimbursement.

It is important to note that disbursements will be held to the 95% level (95% of the total loan amount) until an O&M Manual is submitted to DEQ. An O & M Manual is required for pump stations and wastewater treatment plants. Therefore, the loan recipient should ensure that these documents are submitted in a timely manner.

Disbursement Scheduling

The disbursement schedule should be updated periodically by the loan recipient. Updates should occur after award of the construction contract to incorporate the contractor's anticipated requests to the recipient. Changes to the project's completion schedule will also necessitate an update or at any time actual disbursements are more than plus or minus 10% of the submitted disbursement schedule

Loan Payment

Payment on a loan must be made at least annually, beginning no later than one year after completion of construction. Loan payments will begin within the year following the completion of construction activities as specified in the financing agreement, or as negotiated based on the loan recipient's anticipated revenue flow. Please contact Virginia Resources Authority or Walter Gills regarding any information on disbursement of loan proceeds or payment of loan monies.

**Executive Director
Virginia Resources Authority
1111 E. Main Street
Suite 1920
Richmond, Virginia 23219
Telephone (804) 644-3100**

**Mr. Walter Gills
Clean Water Financing and Assistance
Program
Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218
Telephone (804) 698-4133**

EXHIBIT E

[LETTERHEAD OF BORROWER]

[Date]

Walter A. Gills, Program Manager
Clean Water Financing and Assistance Program
Department of Environmental Quality
P. O. Box 1105
Richmond, Virginia 23218

Re: [BORROWER NAME]
Loan No. C-515[xxx]-[0x]

Dear Mr. Gills:

This requisition, Number _____, is submitted in connection with the Financing Agreement dated as of _____ 1, 201_ (the "Financing Agreement"), between the Virginia Resources Authority, as Administrator of the Virginia Water Facilities Revolving Fund, and the [BORROWER NAME] (the "Borrower"). Unless otherwise defined in this requisition, all capitalized terms used herein shall have the meaning set forth in Article I of the Financing Agreement. The undersigned Authorized Representative of the Borrower hereby requests disbursement of loan proceeds under the Financing Agreement in the amount of \$_____, for the purposes of payment of the Project Costs as set forth in Schedule 1 attached hereto.

Attached hereto are invoices relating to the items for which payment is requested.

The undersigned certifies that (a) the amounts requested by the requisition will be applied solely and exclusively to the payment, or to the reimbursement of the Borrower for the payment, of Project Costs, and (b) any materials, supplies or equipment covered by this requisition are not subject to any lien or security interest or such lien or security interest will be released upon payment of the requisition. In addition, the undersigned certifies that the Borrower has conducted adequate oversight for compliance with the Davis-Bacon Act and related acts through (a) the review of payrolls and associated certifications, (b) the conducting of employee interviews, and (c) the posting of all wage determinations and additional classifications (as appropriate) on the work site, and through this oversight, the Borrower has determined to the best of its ability that the Project complies with the requirements of the Davis-Bacon Act and related acts. The Borrower further certifies that all products included in this request satisfy the appropriate provisions of the American Iron and Steel requirements included in the Agreement.

This requisition includes an accompanying Certificate of the Consulting Engineer as to the performance of the work.

Very truly yours,

By: _____

Its: _____

Attachments

cc: DEQ Regional Engineer (with all attachments)

CERTIFICATE OF THE CONSULTING ENGINEER
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

This Certificate is being executed and delivered in connection with Requisition Number ____, dated _____, 20__, submitted by the [BORROWER NAME] (the "Borrower"), pursuant to the Financing Agreement dated as of _____ 1, 2015 (the "Financing Agreement"), between the Virginia Resources Authority, as Administrator of the Virginia Water Facilities Revolving Fund (the "Authority"), and the Borrower. Capitalized terms used herein shall have the same meanings set forth in Article I of the Financing Agreement.

The undersigned Consulting Engineer for the Borrower hereby certifies to the Authority that, insofar as the amounts covered by this Requisition include payments for labor or to contractors, builders or materialmen, such work was actually performed or such materials, supplies or equipment were actually furnished to or installed in the construction portion of the Project.

[Consulting Engineer]

By: _____

Date: _____

SCHEDULE 1
VIRGINIA WATER FACILITIES REVOLVING FUND
FORM TO ACCOMPANY REQUEST FOR DISBURSEMENT

REQUISITION # _____
BORROWER: [NAME OF BORROWER]
LOAN NUMBER: C-515XXX-0X
CERTIFYING SIGNATURE: _____
TITLE: _____

Cost Category	Amount Budgeted	Previous Disbursements	Expenditures This Period	Total Expenditures to Date	Net Balance Remaining
TOTALS:					

Total Loan Amount \$ _____
Previous Disbursements \$ _____
This Request \$ _____
Loan Proceeds Remaining \$ _____

3

Loan Program Guidance Package FINANCIAL MANAGEMENT

It is essential that all recipients under the **Virginia Clean Water Revolving Loan Fund (Fund)** maintain a financial management/control system for complete accountability of loan monies. An accountability system requires:

- 1) *the overall ability to track and control loan activities*
- 2) *a sound accounting system*
- 3) *good internal controls*
- 4) *compliance with all applicable guidelines*
- 5) *proper procurement procedures.*

This guidance is designed to assist the loan recipient in reviewing existing capabilities and to provide some procedures/guidelines to ensure an adequate accounting system.

The **Virginia Public Procurement Act** provides the legal basis by which all procurements are to be made in the Commonwealth including procurement for professional services, nonprofessional services, construction, equipment and supplies.

The **Uniform Financial Report Manual** issued by the Virginia Auditor of Public Accounts pursuant to Section 15.1-66, **Code of Virginia (1950)**, establishes accounting principles and requirements that must be followed by Virginia loan recipients.

Guidelines for property management, budget requirements and audit requirements are included in the Office of Management and Budget Circular A-102, **Uniform Requirements for Assistance to State and Local Governments**, and Office of Management and Budget Circular A-128, **Single Audit Act**.

The financial management function is comprised of various parts that must be carried out in an effective, coordinated manner to achieve goals and produce results in a timely and efficient manner.

By accepting the loan, the recipient accepts responsibility for controlling the funds it will receive. Commonly accepted standards for an adequate financial management system provide for accurate and complete reporting of finances in accordance with state accounting and reporting requirements. Records that identify the source and application of funds pertaining to awards, obligations, assets, liabilities, outlays, and income should be maintained. Effective control over and accountability for all funds, property, and other assets in the form of audits must be established. Further, a systematic method to assure timely and

appropriate resolution of audit findings and recommendations must be in place.

Accounting Systems

According to the **Uniform Financial Reporting Manual**, all Virginia loan recipients are required to comply with **Generally Accepted Accounting Principles (GAAP)** which mandate that government resources shall be organized and accounted for on a fund basis.

The accounting system itself should be double entry. A general ledger supported by a cash receipts journal, a cash disbursement journal, a journal voucher or general journal, and a fixed assets ledger comprise the minimum requirements. Other ledgers the loan recipient should keep include accounts receivable and accounts payable ledgers, as well as budget/expenditures control and cash control subsidiary ledgers.

Budgeting

The budget is the document by which projected resources are allocated on the basis of need. Budgets also provide a source of control for ensuring that resources are not overspent. The use of a subsidiary budget/expenditure ledger as the basis of comparison and control is an accepted method. Expenditures and encumbrances should be posted in such a manner as to reflect the unencumbered balance available for expenditure.

Procurement Systems

In general, the objectives of a procurement system are to promote to the maximum extent possible free and open competition, and to insure that the loan recipient is receiving the required product at the best price. The system should also be structured to avoid unnecessary expenditures and to provide written guidelines for purchases made by the loan recipient. Provisions to promote maximum usage of minority- and female-owned businesses must also be incorporated in the loan recipient's procurement process.

The Public Procurement Act sets forth the guidelines for the procurement of goods and services in the state. The loan recipient should establish a written set of procedures that detail how procurements will be made and by whom. *Specific procurement information and guidance is provided in Program Guidance #4.*

Property Management Systems

The property management system should provide records which include a description of the property, date acquired, title rights (if applicable), source, labeling or identification codes (serial number, model), cost or value of the item, and the vendor from which it was purchased for all nonexpendable items. The recipient should make inventories periodically. Any differences between physical and book inventories should be immediately reviewed and reconciled.

Internal Controls

Internal control is the means by which the recipient's accounting, procurement, and other management systems are regulated. It serves to assure management that proper procedures are followed with respect to all

project operations, including receipt and disbursement of public funds. Internal controls should include segregation and rotation of duties among employees so that one person does not have complete control over all phases of any transaction. Yearly audits should be made at the recipient's initiative, and systematic methods established to assure timely and appropriate resolution of audit findings and recommendations. All assets and records should be properly protected through the use of appropriate security measures.

Audit Compliance

The recipient must comply with the **Single Audit Act (SAA)** by contracting for audits that are in compliance with the **SAA** and establishing methods for the timely resolution of audit findings.

Loan Program Guidance Package

PROCUREMENT

The recipient's procurement system must be structured to promote free and open competition to the maximum extent possible. It is the loan recipient's responsibility to ensure that it receives the required product at the best price and to avoid all unnecessary purchases and expenditures. The loan recipient's procurement procedures should also promote, to the maximum extent possible, the use of minority and female-owned businesses.

All procurement made during the course of planning, design and construction of the loan project must be purchased, acquired or contracted for in accordance with **Chapter 7, Title 11, Code of Virginia**, and known as the **Virginia Public Procurement Act (Act)**.

The VCWRLF program requires all participants to follow the provisions of the Virginia Public Procurement Act **with no exceptions recognized for localities under 3,500 in population**.

Methods of Procurement

Competitive sealed bidding or competitive negotiation may be used for the purchase or lease of goods, services, construction, etc., under public contract. Professional services may be procured by competitive negotiation. Competitive negotiation may be used for procurement of other than professional services when it has been determined, and documented in writing, that competitive sealed bidding is not practical or advantageous to the public. The procedures for these and other allowable procurement methods are discussed below.

Competitive Sealed Bids

Procurement under this method includes the following procedures or steps. A formal public announcement is made that sealed bids will be received for the specified work, or a solicitation for bids is placed in newspapers and publications with wide distribution. The announcement should be published at least 30 days prior to the bid opening so that the project receives maximum exposure to potential contractors.

All bids must be opened at the same time and all non-responsive bids should be rejected immediately. A responsive bidder is one whose bid has followed all requirements of the bidding document specifications. Bids are then evaluated in accordance with criteria established by the recipient in the bid document to determine the lowest, responsive, responsible bidder. A responsible bidder is one who has the financial and technical resources to perform the scope-of-work. Further, a responsible bidder has a satisfactory performance record, is willing to comply with federal labor requirements and standards, and has an adequate accounting system to document compliance.

Once the bids and bidders have been evaluated and the lowest, responsive, responsible contractor has been

determined, the contract can be awarded. Award of the contract will also follow the method described in the contract documents. Award of the contract cannot be made to a contractor who has been debarred and/or suspended from bidding on any federal or state funded project.

Competitive Negotiation

Procedures for this type of procurement require posting of a public notice and an advertisement in a newspaper of general circulation. The notice and advertisement must identify the needed services and request that proposals be submitted. It should be published so that it receives wide circulation and appears at least 30 days prior to the deadline for receiving proposals. The notice will include the scope of services; the method by which documents associated with the services can be obtained or examined; the criteria to be used to evaluate each proposal; and the deadline and place for submitting the proposals.

Once the proposals are received, they are to be evaluated uniformly in accordance with criteria established in the notice to determine the qualified offerors and acceptable proposals. The recipient then determines the list of the best-qualified firms, and negotiations with these firms begin. Negotiations are to be conducted in a manner that does not identify or disclose any information regarding competing firms. Once a proposal is determined to be the most advantageous to the recipient, considering price and evaluation criteria, the contract can be awarded.

Noncompetitive Negotiation

Award of a contract or subagreement under noncompetitive negotiation methods may occur only when an item is available from a single source, a public emergency exists requiring immediate action, or after solicitation from a number of sources, competition is determined to be inadequate. Authorization from CWFAP must be obtained for procurement through noncompetitive negotiation. A written determination shall document the availability of only the sole source or emergency situation.

Small Purchases

The Act allows small purchases (those which total under \$50,000) to be procured without the formal procedures associated with the competitive sealed bidding and/or competitive negotiation methods. When these instances arise, the recipient should contact several (preferably three or more) suppliers and obtain written or telephone price quotations to make the most advantageous selection. A written small purchase procedure or the Virginia Public Procurement Act must be followed for purchases under \$50,000. Documentation of the procedures followed in small purchases procurement must be kept by the recipient.

Cost and Price Consideration

In competitive negotiation, cost is one of the evaluation factors used in the selection process. Detailed cost data should be obtained from the firms involved in the negotiation process. Pricing should be evaluated based on the complexity of the work and the prices charged in the surrounding geographical area.

The two types of costing/pricing which are typically preferred for service type contracts: *Fixed Price* or *Lump Sum*, and *Cost Plus Fixed Fee*. The *fixed price* arrangements are used when the scope-of-work can be clearly defined and a fixed price or lump sum cost can be negotiated. Under this type of agreement, the final cost cannot be changed unless a formal change in the scope of the work is negotiated. The *cost plus fixed fee* pricing arrangement is used when it is difficult to define accurately the complete scope-of-work. Under this type of agreement, a cost ceiling or upper limit is established along with a fixed fee or profit for the work. If costs increase for additional work within the original scope-of-work, the contractor does not receive any increase in the fixed fee.

The acceptable methods of obtaining the cost for construction services are "Unit Price" bids and "Lump Sum" bids. In lump sum bidding, the entire scope-of- work is grouped together as a single item and the contractor provides a price that will accomplish the entire scope. In unit price bidding, each individual task or item is broken out by linear feet, cubic yards, etc., and a cost is given per unit specified, along with the total cost of all units required for the task identified.

Reporting Requirements

Prior to the award of construction contracts, the recipient shall provide CWFAP with copies of the following information and documents:

The updated or "as-bid" costs for all tasks/elements involved with the project. This budgeting summary should include, and break out individually, the construction cost, equipment cost, fees for inspection and engineering services, etc., which will require outlay during the construction of the project.

Evidence of bid advertisement.

The Bid Form(s) or Bid Proposal(s).

The Bid Tabulation(s).

Anticipated construction start date.

MBE/WBE solicitation information

All bonds (*bid, payment, and performance*)

Initial American Iron and Steel Certification statement from prime contractor

For procurement of professional services other than construction contracts, (*i.e., architectural/engineering*) the recipient will be expected to supply CWFAP with the following information.

Proof of date RFP or RFQ was issued (copy of advertisement)

Copy of executed contract

Copy of evaluation criteria used

Ranking of respondents

Statement detailing with whom negotiations were conducted

All documentation and support information concerning the procurement of service and goods shall be retained in the recipient's project files and will be available for inspection by CWFAP, VRA, or their authorized agent.

Loan Program Guidance Package

FORCE ACCOUNT WORK USE OF EQUIPMENT/PURCHASE OF MATERIALS

The Department of Environmental Quality encourages the use of competitive procurement methods in all phases of projects funded through the Virginia Clean Water Revolving Loan Fund. In some cases, the loan recipient may wish to pursue the accomplishment of portions of the project through the use of their own municipal equipment and personnel. **Personnel costs are NOT eligible costs and cannot be reimbursed.** However, costs associated with equipment usage and purchase of materials are eligible if the loan recipient complies with the following guidelines.

Prior Approval

The loan recipient **MUST** request and receive CWFAP approval of any material purchases and equipment usage **PRIOR** to the purchase and/or performance of the work. When requesting prior approval, the following information is required:

1. Specific information clearly describing the nature and scope of the proposed work.
2. Discussion of the reason for using force account in lieu of competitive bidding, including information comparing force account costs versus costs reasonably expected for the same work under competitive procurement methods.
3. Documentation verifying that existing municipal employees and/or equipment is of sufficient number and qualification to perform the proposed work. (i.e. details of similar work previously performed, special skills of employees, etc.).
4. A list of all materials to be purchased.
5. A list of all equipment to be used and rates to be charged. The rates must not be higher than rates established by the Virginia Department of Transportation.

Materials Purchased

All materials must be procured in accordance with the Virginia Public Procurement Act. Adequate documentation to establish compliance with proper procurement and MBE/WBE solicitation, where applicable, will be required prior to reimbursement. In certain instances, CWFAP may require submission and approval of specifications relative to material purchases. Necessity for submission of specifications will be decided on a case-by-case basis. Certification that all purchases satisfy the American Iron and Steel Requirements as detailed in the VCWRLF Contract Insert is required.

Uses of Equipment

Equipment owned by the loan recipient and used on VRLF projects can be reimbursed on the basis of the actual hours used times the accepted hourly rate. The hourly rate cannot exceed the rates established by the Virginia Department of Transportation.

Rental/leased equipment should only be used when equipment owned by the municipality is not available. Proper procurement procedures, as discussed in PG #4, must be followed when equipment is rented/leased.

Verified time records for equipment usage and material invoices with substantiating documentation must be submitted with the loan recipient's reimbursement request.

Loan Program Guidance Package

FILING AND RECORD KEEPING

Adequate filing and record keeping systems are essential for ensuring project accountability, proper coordination and overall project management. Further, these systems will provide the support documentation needed during final close out and audit. The complexity of the recipient's individual filing and record keeping systems will depend on the project. Implementation of the record keeping and filing systems should begin with the receipt of this package and include any prior documentation and information related to the project.

Electronic documentation including emails not printed and filed should be maintained by CD or acceptable portable electronic device and kept with the paper records.

The main objectives of good record keeping and filing systems are to provide documentation and organization. Written accounts of all transactions, meetings, negotiations, procurements, agreements, construction activities, and telephone conversations should be maintained. Files should be complete, logically arranged, readily accessible, protected from fire, theft and other potential damage, and clearly distinguished from other files. The records and files should be arranged according to topical area (*i.e., planning, design, construction, project management*) of the project and labeled or coded in a manner to clearly identify each specific topic. A master index or mini-tracking system should also be developed to provide easy reference for items associated with various topics.

The recipient must maintain all records pertinent to the loan project for a period of three years after completion of the project unless:

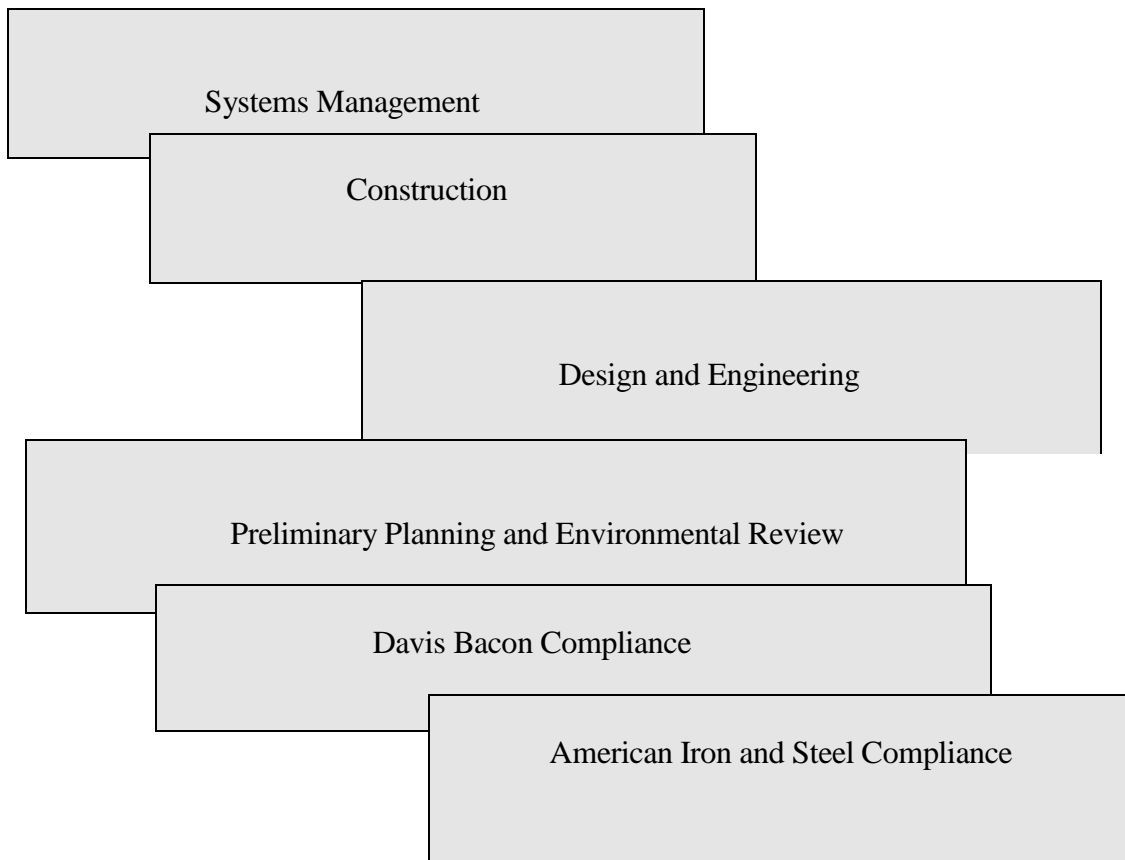
There is a final audit. The three-year period shall begin at the acceptance of the final audit or the resolution of any audit findings, whichever is the last to occur

Any litigation is started before the end of the three-year period, and then all records shall be retained until completion or resolution of any litigation or claim.

the records are for nonexpendable property. Records for nonexpendable property must be retained for three years after its final disposition.

A sample filing system which may be of assistance in organizing the project files is attached.

Example Filing System



MAJOR HEADINGS

- I. Administrative Compliance**
- II. Preliminary Planning and Environmental Review**
- III. Design and Engineering**
- IV. Construction**
- V. Systems Management**
- VI. Davis-Bacon Compliance**
- VII. American Iron and Steel Compliance**

System should accommodate the information that would be contained under the headings referenced above and more detailed subheadings and elements listed on the next page.

Detailed Contents for Record Keeping

I. Administrative Compliance

A. Program Design Manual

B. Procedural Guidelines

C. Loan application

D. Loan agreement and loan conditions

E. Miscellaneous administrative information

F. General correspondence

G. Financial management

1- Narrative of accounting procedures

2- Assignment of duties

3- Procurement procedures, small purchase procedure

4- Budget

5- Procurements; advertising for bids, awards, etc.

6- Request for payment projected schedule

7- Payment request log

a) general ledger

b) cash receipts journal

c) cash disbursements journal

d) fixed assets ledger

**e) subsidiary ledgers: accounts receivable, accounts payable,
budget/expenditure control, cash control**

8- Invoices, pay estimates, administrative expenses

9- Equipment use time sheets

**10- Audit reports; method of procurement of auditors; and
certification of compliance with A-128**

11- Compliance with Civil Rights Act of 1964 (Form 4700-4)

12 - Land Acquisition Process

II. Preliminary Planning and Environmental Review

- A. Professional service contracts and amendments**
- B. PEP**
- C. Environmental Assessment**
- D. Public participation; public hearings**
- E. State/Federal review comments**
- F. State Environmental Review**
- G. General correspondence**
- H. State approvals**

III. Design and Engineering

- A. Professional service contracts and amendments**
- B. Plans and specifications, addenda**
- C. Approvals**
- D. General correspondence**

IV. Construction

- A. Bid tabulations; bid bonds; performance bonds; notices of award; notices to proceed**
- B. Construction contracts**
- C. Listing of subcontractors**
- D. Construction permits, construction schedules, photos**
- E. Right-of-way; easements acquired**
- F. Change orders with back up, approvals**
- G. Inspection reports**
- H. Test reports, material certification**
- I. Shop drawings**
- J. Civil rights compliance certifications**
- K. MBE/WBE goals and affirmative action**

V. Systems Management

- A. VPDES permit**
- B. User charge system**
- C. Sewer use ordinance**
- D. O&M Manual**
- E. Other permits, insurance policies, performance certification**

VI. Davis-Bacon Compliance

- A. Payroll and Payroll Review**
- B. Wage Decisions and additional classifications**

VII. American Iron and Steel Requirements

- A. List of Materials Purchased**
- B. List of Materials Meeting American Iron and Steel Definition**
- C. Certifications**
- D. De Minimis List**

Loan Program Guidance Package

PRELIMINARY ENGINEERING AND ENVIRONMENTAL REVIEW

The Virginia Clean Water Revolving Loan Fund (Fund) Program Design Manual identifies a number of requirements applicable to all projects receiving loan assistance under the program. Some of the requirements are applicable to the planning stage of a project. The applicable planning requirements are as follows:

1. Environmental Review
(*similar to National Environmental Policy Act (NEPA) reviews*)
2. Cost-effectiveness Analysis
3. Water and Energy Conservation Analysis

The most appropriate and efficient vehicle for satisfying the above-mentioned planning requirements is the Preliminary Engineering Proposal (PEP) described in the Sewage Collections and Treatment (SCAT) regulations. Thus, planning requirements can be satisfied through one document and the most cost-effective, environmentally sound, and implementable project can be identified.

In addition to the State's PEP planning process (for projects not categorically excluded (see below)), an environmental assessment on the alternative selected must be performed and subjected to an environmental clearance process prior to design and construction of the facility. The complexity and level of detail required in preparing the PEP will vary with local circumstances, the size and nature of needed facilities, and the extent of previous planning efforts.

Categorical Exclusions from Environmental Assessment Requirement

Loan recipients may request an exclusion from the environmental assessment requirement if the loan project meets the following conditions as applicable to that project:

1. An upgrade in level of treatment of an existing treatment works on the existing site of the works.
2. An expansion of an existing treatment works on the existing site of the works which would result in no more than a 25% increase to the existing service population.
3. Sewer rehabilitation or separation in order to correct infiltration/inflow or combined sewer overflow problems, which does not include significant sewer relocation or a significant increase in sewer capacity.

4. Replacement of existing equipment or structures at their present location.
5. Installation of on-site treatment technologies (individual or cluster septic tank/drainfields, mound systems, sand filters, etc.).
6. Minor extensions of water or sewer lines which will be located within road right-of-ways or otherwise previously disturbed areas.

The exclusion request should be transmitted to CWFAP and should include a description of the project, a discussion of how the project meets one or more of the exclusion conditions and support documentation. CWFAP will review the project and issue a Categorical Exclusion, if appropriate. For localities anticipating request of a categorical exclusion, contact with CWFAP staff is recommended early in the planning process to receive preliminary indication of acceptability. This may reduce project delays resulting from CWFAP non-concurrence.

Effluent Limits (Wastewater Treatment Works Only)

For projects involving treatment works, the first step in the planning process is the identification of effluent limitations. Effluent limitations are established by the VPDES Permit issued by DEQ. Application forms can be obtained from DEQ Regional Offices.

Current Wastewater Treatment and Collection Systems

Existing wastewater treatment and collection systems should be identified, noting existing service areas, treatment plants, and sludge disposal methods. Information on existing wastewater flows and loadings including average and peak flows, dry and wet weather flows, combined sewer overflows, and the location, frequency, and volume of bypasses should be included. Available data on industrial and commercial flow should be summarized. The overall performance and integrity of the existing wastewater treatment facilities should be evaluated. Where relevant, this section should include a discussion of the documented cases of public health problems and/or groundwater contamination related to inadequate wastewater systems.

Projected Future Wastewater Flows

Future wastewater flows and loads for the service area should be projected. The planning period should, at a minimum, be 20 years beyond the date the facilities are scheduled to begin operation. While the planning period may extend beyond 20 years, loan assistance will generally be limited to 20-year design life for treatment works and 50-year design life for sewers.

The following factors, along with current flows described earlier, should be considered when estimating future wastewater flows and loads for the area. First, current projections of economic and population growth

for the planning period, and flows and loads per unit as described in the SCAT should be taken into account. The magnitude of I/I should also be assessed. Finally, future changes in flows and wasteloads from industries to be sewered by the treatment works should be projected, as well as the effect of pretreatment requirements.

Development and Evaluation of Alternatives

The development and evaluation of alternative wastewater treatment works, processes, and/or techniques capable of meeting the applicable effluent, water quality, or public health goals of the project must be presented. The primary objective of this evaluation is to identify and select the most cost-effective solution for wastewater and sludge management for the planning area. The evaluation should include the present worth value of the estimated capital and operation/maintenance costs for the alternatives presented over the planning period.

The alternative of optimizing performance of existing facilities should be considered first and the use of innovative and alternative technologies as well as conventional technologies should be addressed. Innovative/alternative technologies should be evaluated for the opportunities they present in terms of capital and/or operational cost savings, more efficient use or recovery of energy, and the reclamation and reuse of wastewater and sludge constituents.

Environmental Assessment

The environmental assessment must address and consider both the direct and indirect environmental impacts of the selected alternatives. Accordingly, both adverse and beneficial impacts need to be identified and considered. Direct impacts are caused by the construction of the treatment works, and indirect impacts are caused by the development made possible by the project. The assessment must also evaluate and discuss the impacts that would result without the project (a take-no-action alternative).

The following is a list of environmental concerns and effects, which must be addressed through an environmental assessment of the alternatives being considered. Any adverse affect should be identified as short term or long term (short term means while under construction), and any protective measures to reduce or eliminate their impact should also be identified.

1. Effects, destruction and/or displacement of wildlife and marine life, including endangered species, and their habitats, or food chain.
2. Destruction or disturbance of marshland or wetlands.
3. Displacement of households, businesses, or services.
4. Possible destruction of surrounding farm land or the loss of open space land.
5. Effects on land having archeological significance.

6. Destruction or disturbance of areas of historical significance.
7. Use of irretrievable resources.
8. Noise.
9. Traffic circulation and traffic pattern disruption.
10. Odor/air quality.
11. Damage and/or pollution of surface water resulting from erosion, discharges or other sources.
12. Aesthetic concerns and visual impacts.
13. Any disturbance to designated wild, scenic and/or recreational river use.
14. Socio-economic changes.
15. Floodplain impacts

The impacts of the selected alternative should be summarized. Particular attention should be paid to unavoidable adverse impacts resulting from the project, and the relationship between short-term impacts on the environment and long-term maintenance and enhancement of environmental quality. This section should also include, as appropriate, the steps that will be taken to avoid or minimize the adverse impacts, as well as structural and nonstructural methods of mitigating unavoidable impacts.

Selected Alternative

In determining the selected alternative, several factors need to be considered. The project cost is obviously an important consideration; however, the environmental impacts of the alternatives must also be taken into consideration. The relative costs must be weighed against the relative impacts. Projects with essentially equal environmental impacts will normally be selected solely on the basis of costs. However, a more costly alternative may be the best selection if it is more environmentally sound than a less costly alternative. Once the most cost-effective and environmentally acceptable alternative has been selected, more detailed information should be presented. This information should include:

A schematic diagram of the selected plan, with unit process design parameters and sizes.

A description of project financing and the cost impacts on the wastewater system users.

A projected implementation schedule, including major milestones, for completion of the project.

Once the loan recipient has prepared the PEP it must be approved by CWFAP. The procedures are as follows:

1. The PEP should be forwarded to CWFAP. A Preliminary Engineering Conference may be

appropriate at this time.

2. If the loan recipient feels it is eligible for a categorical exclusion from the environmental assessment, they should submit the request, with appropriate documentation, to CWFAP as discussed earlier. CWFAP will issue an environmental clearance letter and the PEP may proceed to Step #8 below. If CWFAP does not concur with the request, or significant adverse public comment is received as a result of the notification, then the PEP must proceed through Steps #3-8.

3. The Environmental Assessment, including a project description and site location map, must also be forwarded to all review agencies for review and comment. A list of these agencies is attached. The agencies must be given 30 days for review and comment. The recipient must retain copies of the transmittal letters as well as all review comments received.

4. The loan recipient must hold a public hearing for the purpose of discussing the project, alternatives considered, environmental impact, project costs, and associated user charge impact. The public hearing must not be held until after the end of the 30-day agency review referenced in #3 above. Any comments received from the review agencies should be discussed during the hearing. Public notice must be made at least 30 days prior to the hearing and must be published by the recipient at least once per week for two consecutive weeks in a newspaper of general circulation in the service area involved in the project. The PEP and Environmental Assessment must be made available for public review prior to the hearing. A record of the hearing proceedings shall be kept.

5. The loan recipient must provide CWFAP with a copy of the transmittal letters and all comments received from the appropriate agencies as well as the notice of the public hearing and the public hearing record. The comments provided must be addressed, with any project changes made as deemed appropriate, based on environmental effects, monetary and other resource costs, and overall feasibility and reliability.

6. CWFAP will review the submittal from the loan recipient and determine whether a Statement of Environmental Review (SER) should be issued. If the environmental assessment indicates that a significant environmental impact may occur and that the impact cannot be mitigated through changes in the project, then an Environmental Impact Statement (EIS) must be prepared. Steps for preparing an Environmental Impact Statement are outlined in the CWFAP's Standard Operating Procedures Manual and will be provided to the loan recipient once it is determined that an EIS must be done. Otherwise, the CWFAP will prepare and issue the SER.

7. The SER will be forwarded to the loan recipient for publishing locally and in an appropriate newspaper of general circulation in the area in which the project is to be built. The SER must be noticed for a period of 30 days. CWFAP must be provided with a Public Notice Verification Sheet signed by the newspaper in which the notice was published. If no significant adverse comments are received from the public, CWFAP will issue a clearance letter completing the environmental review.

8. CWFAP will review any comments provided and approve the PEP, if appropriate.

ENVIRONMENTAL REVIEW AGENCIES

Mr. Stephen Long, Division Administrator
Environmental Division
Department of Transportation
Memorial Hospital Building
1401 East Broad Street
Richmond, Virginia 23219
Attention: James Cromwell
804/ 225-3608

Ms. Danette Poole, Division Director
Division of Planning and Recreation Resources
Department of Conservation and Recreation
203 Governor Street, Suite 326
Richmond, Virginia 23219
(NOTE: Send 3 Complete Copies)
Attention: Robbie Rhur
804/ 371-2594

Mr. Tony Watkinson, Chief Mr.
Habitat Management Division
Virginia Marine Resources Commission
2600 Washington Avenue
3rd Floor Newport News, Virginia 23607

Tom Walker, Regulatory Branch Chief
Army Corps of Engineers
803 Front Street
Norfolk, Virginia 23510
757/ 201-7657757/ 247-2250

Local Wetlands Boards: To obtain the address
and telephone number of the Local Wetlands
Board, call the Virginia Marine Resources
Commission: 757/ 247-2252

Mr. Keith Tignor
Office of Policy, Planning & Agricultural Development
Dept. of Agriculture & Consumer Services
P. O. Box 1163
Richmond, Virginia 23218
804/ 786-3515
cc: Commissioner
Dept. of Agriculture & Consumer Services

Mr. Ray Fernald, Manager
Environmental Services Resources Commission
Department of Game and Inland Fisheries
4010 West Broad Street
Richmond, Virginia 23230-1104
Attention: Amy Ewing or Ernie Aschenback
Amy: 804/ 367-2211
Ernie: 804/ 367-2733

Mrs. Ethel Eaton, Manager
Department of Historic Resources
2801 Kensington Avenue Richmond, Virginia 23221
804/ 482-6088

IMPORTANT NOTE:

An additional 5 complete copies must be sent to the project's DEQ Regional Project Manager at the address shown under the Clean Water Financing & Assistance Contacts Page

NOTE: the Project Review Application Form is not required, but helpful and can be found at:
http://www.dhrvirginia.ciov/review/orc_home.htm

Information regarding the required search of the archives and any associated cost can be found at:
www.dhr.virginia.gov/archives/archiv_searches.htm

Loan Program Guidance Package
AFFIRMATIVE ACTION AND NONDISCRIMINATION
PROVISIONS

MBE/WBE Fair Share Objective

The loan recipient is required to monitor and maintain records regarding the contractor's efforts to meet and fulfill our affirmative action fair share objectives. The CWFAP will provide the loan recipient with its fair share objective to be included in Subpart D of the Contract Insert prior to solicitation of bids. The Contract Insert is revised periodically. The loan recipient must check our website to assure they have the most current version of the Contract Insert. Upon receipt of bids, the loan recipient shall request the apparent low bidder's documentation to support his or her efforts in the solicitation and recruitment of MBE/WBE contractors, subcontractors, and/or equipment suppliers, etc. The loan recipient must evaluate the low bidder's good faith efforts regarding MBE/WBE solicitation prior to contract award. All MBE/WBE solicitation and recruitment documentation must be submitted to CWFAP along with the bid package. The contract should not be awarded until CWFAP has approved the bid package.

The loan recipient shall obtain copies of the VCWRLF MBE/WBE utilization reporting form identifying the selection of minority and female-owned businesses to be utilized during construction of the facility. The contractor and all subcontractors will report their utilization of MBE/WBE firms to the loan recipient on a quarterly basis during the construction period. The loan recipient must compile these MBE/WBE utilization reports and submit on a quarterly basis to CWFAP at the following address:

Clean Water Financing and Assistance Program
Dept. of Environmental Quality
P. O. Box 1105
Richmond, Virginia 23218

VCWRLF Contract Insert

Copies of the most recent VCWRLF Contract Insert must be incorporated verbatim in all construction and service contracts.

Nondiscrimination Provisions

The loan recipient shall maintain records of all executed nondiscrimination (EEO compliance) certifications filed

Loan Program Guidance Package

PRECONSTRUCTION CONFERENCE

Prior to the initiation of construction, it is suggested that the recipient hold a Preconstruction Conference. This will be the first formal meeting of those involved in construction of the project and should be attended by all parties. The conference will provide a better understanding of the roles and responsibilities during construction of the project, as well as procedures for complying with rules and regulations governing the program.

Attendees

Attendees should include the contractor, subcontractors, if known; representatives from utility and railroad companies. and the Virginia Department of Transportation (as appropriate); the Department of Environmental Quality; the recipient and its engineering firm; and any other funding agency which will be involved in construction of the project. The recipient, or its engineer, is responsible for contacting all parties involved and advising them of the conference date, time and location. **The loan recipient should contact CWFAP as soon as the Preconstruction Conference is scheduled so that a representative can be in attendance.** The CWFAP may hold a preconstruction meeting with the loan recipient around the same time as the preconstruction conference to discuss the VCWRLF requirements related to the construction phase as well as CWFAP's role and responsibilities during this phase.

Topics for Discussion

To ensure that the project proceeds according to schedule and the requirements contained in the contract documents are met, the communication and contact points along with the organizational affiliation, responsibilities and authority of each participant should be established.

Overall project schedules and coordination between the contractors, utility companies, railroads, and the Virginia Department of Transportation should be addressed. This would include any permits required or advance notices to be given by the contractor to those impacted for roadway or railway crossings.

Any remaining questions regarding the plans, specifications or other contract documents should be addressed during the preconstruction conference. Procedures for submittal of items such as shop drawings, change orders, and information for the Operation and Maintenance Manual should be discussed.

The procedures for the contractor to request payment, including forms, timing, methods of establishing quantities, documentation, and retainage, should be detailed.

Frequency of inspection by the regulatory agencies, as well as progress meetings between the contractor and other interested parties, must be highlighted.

The names, addresses and telephone numbers of those responsible during emergencies should be exchanged

by or made available to everyone involved.

A system for handling citizen (landowner) complaints and personal property damage should be set up. This would also cover procedures for notifying landowners of needed access to a work site, disruption of services as a result of construction, and other actions which are likely to cause inconvenience.

Contractor responsibilities regarding compliance with local, state, and federal laws and regulations should be covered particularly Davis Bacon Act compliance and American Iron and Steel requirements. Access to the site and inspection of project records by the regulatory agencies (CWFAP in particular) must be addressed.

Employment regulations such as affirmative action programs, nondiscrimination policies, required nonsegregated facilities for employees, and hiring practices (WBE, MBE, and persons with disabilities) must be discussed.

These topics only identify major areas which should be discussed at the preconstruction conference. Establishing a checklist is recommended to ensure that all items applicable to your project are addressed.

Follow up to Conference

Minutes or a written summary should be prepared following the meeting. Copies should be sent to all attendees, as well as involved parties who were unable to attend. The list of contacts for each party involved should also be prepared and provided to each.

Proper coordination and discussion of these, and other appropriate topics, will alleviate many problems that can delay the project and lead to increased costs.

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Loan Program Guidance Package
STATE CONSTRUCTION OVERSIGHT

During the construction phase of projects funded through the Virginia Clean Water Revolving Loan Fund, the CWFAP will maintain off-site construction monitoring and conduct periodic on-site evaluations of construction activities. The purposes of the state oversight program are as follows:

To provide assistance to loan recipients in all aspects of loan and construction management in order to enhance management effectiveness and efficiency so the project is successfully completed.

To assess the project's compliance with applicable federal and state requirements and loan conditions.

To ensure that loan recipients maintain appropriate financial and records management systems.

To ensure that the project is constructed in substantial accordance with approved plans, specifications, and change orders.

To verify that payments are being made for work-in-place and to enhance the processing of disbursement requests.

The oversight program includes continuous off-site monitoring, interim project evaluations, a final project evaluation, and a final financial evaluation. The extent and frequency of monitoring will depend on the size and complexity of the project, and the needs and performance of the loan recipient and its project management team.

Off-Site Monitoring

CWFAP will conduct off-site (in CWFAP regional and headquarters offices) monitoring through the review of evaluation reports, change orders, correspondence and review and approval of disbursement requests. Copies of these documents should be provided to CWFAP, as appropriate, for this purpose. This information will provide an indication of the adequacy and progress of construction and may form the basis for establishing or adjusting the frequency of on-site monitoring activities.

Interim Project Evaluations (IPE)

Interim project evaluations are conducted periodically during the construction phase of the project. Their frequency will be determined by the size and complexity of the project, the rate of progress being achieved, and the nature and frequency of problems/issues arising during construction. The evaluations normally occur at least once per month and include observation of construction progress, as well as review of specific areas of project *management (i.e., project files, procurement, change order management, etc.)*.

Principal areas reviewed during IPE's are as follows:

- Construction/Contract Accounting and Management
- Disbursements (including Schedule)
- Change Order Management
- Construction Monitoring/Administration
- Signs and Posters
- Construction Review
- Compliance with Loan Conditions
- Compliance with Davis Bacon and Related Acts
- Compliance with American Iron and Steel Requirements

An IPE Report is prepared which includes the evaluation findings and conclusions, as well as CWFAP recommendations, to assist the recipient in complying with project requirements in order to achieve a successful project.

Final Project Evaluation

CWFAP will conduct a final evaluation to determine whether all program requirements and loan conditions have been satisfied, and that construction of the project was completed in substantial accordance with approved plans, specifications, and change orders. The final evaluation will be conducted after notification by the loan recipient that construction is complete and, if appropriate, will be conducted in conjunction with the Certificate to Operate Inspection referenced in the Sewage Collections and Treatment (SCAT) regulations.

The on-site construction evaluation will determine whether or not the facility is capable of functioning as designed, all equipment is operational and performing satisfactorily, and all administrative and laboratory facilities are complete and available for use.

The final project evaluation will be documented by a report that presents the findings and conclusions of the evaluation. The report may also present recommendations or conditions to be satisfied relating to completion of unfinished work, submission of additional information or documents, or other items required by the loan program.

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Loan Program Guidance Package

WAGE DETERMINATION AND PAYROLL REVIEW

(DAVIS-BACON ACT COMPLIANCE)

All projects must comply with the Davis-Bacon Act (DBA). Federal wage laws are applicable to all construction contracts and/or subcontracts in excess of \$2,000 which are part of the loan project. The Davis-Bacon Act stipulates that all laborers and mechanics employed by the contractor or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the area as determined by the Secretary of Labor. The wage determinations issued by their Department of Labor's Withholding section can be accessed at <http://www.wdol.gov/> or directly at <http://www.gpo.gov/davisbacon/va.html>.

Loan Recipient Responsibilities

The loan recipient must monitor all aspects of the project but in the case of Davis Bacon Act, they have specific responsibilities:

1. Include the latest VCWRLF Contract Insert in the contract documents.
2. Determine which wage determination or determinations are needed for the type of construction and geographic area and include with the contract insert.
3. Address the requirements of the Davis Bacon Act and payroll review at the preconstruction conference.
4. Assign recipient personnel or contracted personnel to determine what subcontractors are being used on the job and collect weekly payrolls from the contractor for his laborers and mechanics and those of his subcontractors. Examine weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. Immediately conduct interviews in response to any alleged violation of the prevailing wage requirements.
5. The loan recipient or agent shall:
 - a. Verify that contractors and subcontractors include covered employees in fringe benefit plans as provided for in the Department of Labor wage determinations.
 - b. Review contractors and subcontractors use of apprentices and trainees to verify registration in Department of Labor approved programs and that contractors and subcontractors are not using disproportionate numbers of trainees and apprentices.

6. Ensure all EEO, OSHA, Wage Determination and Additional Classifications, Davis Bacon, and any other required postings are displayed on each work site.
7. The loan recipient is required to certify compliance with Davis Bacon requirements as part of each reimbursement request (PG #2).

The CWFAP may monitor the performance of the loan recipient in its enforcement and compliance of the minimum wage rules and regulations. Payrolls and basic records shall be maintained by the contractor and each subcontractor for a period covering three years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work. The loan recipient shall also maintain their records of payrolls, payroll reviews, on-site subcontractors, and compliance actions for at least three years after completion of the work.

Preconstruction Conference

The loan recipient should attempt to reduce the possibilities of labor standards violations by taking preventative measures to minimize misunderstanding of what is required. The loan recipient shall hold a preconstruction conference. One purpose of the preconstruction conference is to apprise the contractor and all available subcontractors of their responsibilities and obligations concerning compliance with the minimum wage laws.

Wage Determination(s)

The loan recipient is responsible for obtaining a wage determination or determinations for the proper construction category and geographic area from the Department of Labor (DOL) (see Wage Determinations on line at <http://www.wdol.gov>) and incorporating the appropriate wage determination into the construction specifications. The Wage Determinations website allows you to select your state and county and then provides a list of wage determinations by construction category. Wage determinations are issued under Building Construction, Heavy Construction, Highway Construction, and Residential Construction. Most CWFAP projects include only Building or Heavy wage determinations. DOL defines Building as construction, rehabilitation, and repair of sheltered enclosure with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. Heavy Construction includes those projects not identified as building, highway, or residential. Some contracts will include multiple types of construction such as Heavy and Building. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects. Additional wage determinations may be issued for certain types of specialty construction under the Heavy Construction umbrella such as a separate water and sewer lines wage determination. If a specialty determination has been issued for the loan recipient's area it must be used instead of a general Heavy Classification wage determination.

Some contracts will include multiple types of construction and require more than one wage determination. In the case of a force main and pump station contract both a “Building Construction” and a “Heavy Construction” wage determination must be included in the specifications. The contractor must either separate payroll hours out by construction category and pay the rates required for each category or pay the highest applicable rate between the two for all work done.

In the special case that a project extends across the geographic boundaries of two or more wage determinations, a wage determination for each separate area in which work is done must be included in the specifications. Again, as in the case above, the contractor must either pay the higher rate or separate work hours out according to the geographic district in which the work is done.

Prior to publishing the Invitation to Bid, the loan recipient shall download the proper wage determination(s) for their city or county and construction category. The DOL periodically amends wage determinations. **Ten days prior to opening bids, the loan recipient must check the DOL website to ensure their wage determination has not been amended.** If it has been amended, the recipient must issue a specification addendum to include the latest wage determination in the specifications. As long as bids are opened within the ten day period, the wage determinations will remain in effect for the life of the contract.

Payroll Review

The loan recipients are required to monitor contractor compliance. Once construction begins, the loan recipient must enforce payment of pay scales. The loan recipient will be responsible for the weekly review of payrolls and a determination that all contractors and subcontractors did submit payrolls as required. Special attention should be paid to claimed apprentices and trainees, deductions, work hours, and pay rates according to job classification and predetermined fringe benefit rates. *The payrolls should be examined within seven days of receipt in order to resolve problems promptly and undertake any corrective actions before they become serious and while workman are still available.*

Payroll Submittals: Each contractor and subcontractor shall furnish to the loan recipient each week a copy of their weekly payrolls for the preceding work week or partial work week. The payroll submitted shall set out accurately and completely all of the following information for each employee: their name; his or her correct classification; hourly rates paid as wages including fringe benefits or a cash equivalent thereof; daily and weekly number of hours worked; deductions made; and actual wages paid. All mechanics and laborers employed upon the site of the work will be paid unconditionally and not less than once a week.

The contractor and loan recipient are responsible for determining which subcontractors worked “on site” during the payroll period. It is recommended that the loan recipient require the contractor keep a log on all subcontractors on site each week and submit that log to the loan recipient with their payroll submittals.

Compliance Statement: Each payroll submitted shall be accompanied by a Statement of Compliance signed by the contractor or subcontractor or his/her agent who pays and supervises the payment of persons employed under the contract and shall certify the following:

- 1) that the payroll for the payroll period contains the information noted above and that such information is true and complete,
- 2) that such laborer or mechanic employed on the contract during the payroll period has been paid the full weekly wage earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in regulation, and
- 3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination.

Attachment #5 of the "VCWRLF Contract Insert" is a suggested certification form "DOL Form #347". The form also includes a sample payroll form. These forms can be downloaded from the DOL's Withholding Divisions website as well. Other forms may be used that contain all of the required information.

Deductions: The weekly payment shall be computed at wage rates not less than those contained in the "wage determination" included in the contract specifications regardless of any contractual relationship alleged to exist between the contractor or its subcontractors and such laborers and mechanics. No deduction or rebates are allowed except those included in the Copeland Act. The DOL website addresses the types of deductions such as garnishments and dues which may be legally deducted. All deductions will be shown on the payroll form with adequate description of each deduction.

Fringe Benefits: Whenever the minimum rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination classification or pay another bona fide fringe benefit or an hourly cash equivalent thereof. If the contractor does not make payment to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account sufficient assets to meet obligations under the plan or program.

Contributions made or cost reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions above. Regular contributions made or costs incurred for more than a weekly period (but not less than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

If a contractor pays fringe benefits to approved plans, funds, or programs in lieu of cash they shall continue to show on the face of the payroll the basic hourly rate and overtime rate paid to his employees. Such a contractor shall indicate on the payroll form what he is paying to approved plans,

funds, or programs for each craft and indicate the fringe benefit amounts are not less than were determined in the applicable wage decisions

Contractors who offer no actual fringe benefits shall pay to the employee and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. When overtime is paid, it is not necessary to apply the overtime multiplier to cash paid in lieu of fringes. The rate shall be the normal overtime rate plus the amount of fringe benefits determined for the employees wage classification.

Job Classification and Related Issues

Laborers and mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the actual time worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed. This includes work in multiple categories on the same Wage Determination or work in classifications on two more Wage Determinations applicable to the same contract.

Any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, should be classified in conformance with the wage decision. If it is not possible to classify an employee in one of the classifications listed than an Additional Classifications must be requested. To request an additional classification the contractor must submit a completed SF-1444 Request for Authorization of Additional Classification and Rate, available on the Department of Labor's Wage Determination website <http://www.wdol.gov/library.aspx> (Library) under Conformances, to the CWFAP. Following CWFAP review the request will be forwarded to the Department of Labor (DOL) as specified in 29 CFR 5.5 for a final action. The DOL has sole authority to approve or disapprove additional wage classifications.

The DOL will review a request for an additional classification and wage rate and/or fringe benefits only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

The SF-1444 Form must be posted with the Wage Determination posters upon submittal and the wage rate paid as appropriate. The loan recipient will be notified of acceptance or rejection of the proposed rate by CWFAP. The DOL may accept the new rate, reject the new rate, or stipulate a higher rate be paid. If the DOL stipulates a higher rate than that being proposed, the contractor must increase their wage rate accordingly and provide back pay if work has commenced.

Enforcement and Corrective Actions

The wage determination(s) shall be posted on the work site and monitored to assure that they remain posted throughout the project. The recipient's reimbursement request letter includes a certification statement by the loan recipient ensuring compliance with all Davis Bacon requirements.

The contractor or subcontractor shall make the payroll records required available for inspection, copying, or transcription by authorized representatives of the loan recipient, CWFAP, EPA, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. Failure to submit the required records upon request or to make such records available may be grounds for debarment action.

The loan recipient should initiate an investigation when apparent violations are discovered. These would include valid complaints from an employee or other knowledgeable party, habitual contract violations which indicate carelessness on the part of the contractor, discrepancies in time or payroll records, and conditions which evidence apparent falsifications. If these matters cannot be resolved through informal actions then CWFAP and DOL should be notified.

If violations resulted in underpayment of wages, actions shall be taken to ensure proper restitution. The contractor should be informed in writing of required wage adjustments and the amount of payments to be made in back wages to affected employees. *The contractor shall provide evidence of such restitution by submitting a supplemental payroll containing amounts paid and copies of both sides of cancelled checks issued to the affected employees.* Should the contractor fail to make full restitution and correct violations within a reasonable period of time, funds should be withheld in amounts necessary to ensure proper restitution.

The governing body may withhold from the contractor under this contract so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics including apprentices, trainees, and helpers employed by the contractor and subcontractor, the full amount of wages required by the contract.

A breach of these contract clauses or those contract clauses continued in 29 CFR 5.5 may be grounds for termination of the contract. Falsification of a payroll certification may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the United States code.

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Loan Program Guidance Package AMERICAN IRON AND STEEL

The Water Resources Reform and Development Act of 2014 (WRRDA) amended the Federal Water Pollution Control Act (FWPCA) to include an “American Iron and Steel” (AIS) requirement that requires all VCWRLF loan recipients to use iron and steel products that are produced in the United States .

Loan Recipient Responsibilities

The loan recipient must document that all iron and steel products which are retained as part of their “project” are American Iron and Steel. Production in the US of the iron or steel products requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. It is the responsibility of the loan recipient to obtain and keep on file all required AIS certifications described in this section of these Procedural Guidelines. An iron or steel product is one of the following made primarily (50%) of iron or steel that is permanently incorporated into the public water system or treatment works including Listed Products, Municipal Castings, Construction Materials, and Structural Steel as listed below:

- a. Lined or unlined pipes or fittings, manhole covers, hydrants, tanks, flanges, pipe clamps and restraints, valves, and reinforced precast concrete. Rebar and wire in reinforced precast products must be produced in the US and the casting of the concrete product must take place in the US. Cement and other raw materials used in production of reinforced precast concrete products do not have to be of domestic origin.
- b. Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings are: access hatches, ballast screen, benches (iron or steel), bollards (excluding any fill material), cast bases, cast iron hinged hatches (square and rectangular), cast iron riser rings, catch basin inlets, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes (boot and inlet), drainage grates, frames and curb inlets, inlets, junction boxes, lampposts, manhole covers (rings and frames), risers, meter boxes, service boxes, steel hinged hatches (square and rectangular), steel riser rings, trash receptacles, tree grates, tree guards, trench grates, and valve boxes (covers and risers).
- c. Structural steel is rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zees. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

- d. Construction materials are those articles, materials, or supplies made primarily (greater than 50% materials cost) of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems (discussed below). Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), welding rods, decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, and stationary screens.

The following products are not considered American Iron and Steel. Mechanical and electrical components, equipment and systems are not considered construction materials and do not have to meet the AIS requirements. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system. The following examples (including appurtenances necessary for their intended use and operation) are NOT considered construction materials and do not have to meet the AIS requirements: pumps, motors, gear reducers, drives (including variable frequency drives (VFDs)), electric/pneumatic/manual accessories used to operate valves (such as electric valve actuators), mixers, gates, motorized screens (such as traveling screens), blowers/aeration equipment, compressors, meters, sensors, controls and switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, analytical instrumentation, and dewatering equipment.

Retained products and goods are part of the completed construction. Materials used in construction that do not remain as part of the completed project do not fall under these requirements. Additionally, certain ineligible portions of the construction contract may not be considered part of the “project”. EPA uses the concept of distinct purpose, time, and place in defining what constitutes a project. An unfunded separate drinking water or stormwater system included in the construction contract may be considered to be separate from a sewer system “project” if they have clearly distinct separate purposes (transporting drinking water or stormwater, not sewage). In such cases, all of the components necessary for the sewer system portion of the project must meet the AIS requirements, but the components of the drinking water or stormwater portion of the project which have distinctly separate purpose(s) do not have to satisfy AIS requirements. Any portions of the project that are to be excluded from AIS under the designation as separate drinking water or stormwater portions of the contract must be identified by the consulting engineer during development of plans and specifications, and approved by the CWFAP prior to advertisement of the project. The bid document and the contractor’s schedule of values should distinctly identify all parts and components of the project to be excluded from American Iron and Steel requirements.

Contractor Responsibilities

Prime contractor responsibilities are included in the VCWRLF Contract Insert. The prime contractor must certify that all iron and steel products which are retained as part of the project satisfy AIS requirements except those “waivered” by EPA, or those included as “De Minimis” products including those supplied or installed by their subcontractors.

Within no more than 21 days of determination of the apparent low bidder, the contractor must submit to the loan recipient the initial certification included as Attachment #6 of the Insert. At the conclusion of the project the contractor must submit with their final payment request the final certification included as Attachment #9 of the Insert. Individual certifications must be provided for all AIS products. Each certification has to be signed and include the name of the project, the name and/or description of the product, and the location where it was manufactured. Step by step certification of a product identifying each handler of the product and certifying each step, and/or certifications of the individual parts of the final product are the best type of certifications. Alternatively, the final manufacturer may provide a certification asserting that the final product and its component parts were all manufactured in the United States. A Certification should be submitted with each shop drawing submittal for AIS products requiring shop drawings.

Waivers

EPA has sole authority to approve waivers to the AIS provisions. The loan recipient may seek a product specific waiver at any point before, during, or after the bid process. Applicable nationwide waivers and any product specific waivers should be listed in the contract specifications. The loan recipient’s engineer or the prime contractor may suggest to the loan recipient product specific waivers not listed in the bid document. However, only the loan recipient may request a waiver. The loan recipient has sole determination whether or not to request a suggested waiver. The waiver request(s) must satisfy one of the following conditions and be approved by EPA:

- a. Iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- b. Inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent; or
- c. Applying the requirements of AIS would be inconsistent with the public interest.

The waiver request must include proper and sufficient documentation to support the request. Attachment #7 to the Insert is a sample Waiver Request Form. A “Request Checklist for Waiver Review” is provided

as Attachment #8 to the Insert to assist the contractor and loan recipient in preparation of a waiver request. The information requested must be included with the waiver request letter. The checklist is not mandatory but the information requested must accompany the waiver request in one form or another.

Waiver requests must be submitted to Mr. Walter A. Gills, Program Manager, Clean Water Financing and Assistance Program, at the address included on page 2-1. Upon review of the waiver request the loan recipient may be asked for additional information, or the waiver request will be forwarded to EPA for a final determination. EPA will not accept requests except through the state program manager. Upon approval of the waiver request by the Regional Administrator, EPA will notify the loan recipient directly.

Several National Product Waivers and numerous project specific waivers have been approved by EPA. These can be found at http://water.epa.gov/grants_funding/aisrequirement.cfm.

De Minimis

Every wastewater infrastructure project involves the use of thousands of miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. For many of these incidental components, the country of manufacture and the availability of alternatives is not always readily or reasonably identifiable prior to procurement in the normal course of business; for other incidental components, the country of manufacture may be known but the miscellaneous character in conjunction with the low cost, individually and (in total) as typically procured in bulk, mark them as properly incidental. Examples of incidental components could include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube, etc.

The EPA has granted a national waiver of the AIS requirements for de minimis components of eligible infrastructure projects. This action permits the use of products that might otherwise be prohibited. Costs of de minimis components cumulatively may comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into the project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into the project.

Contractors who wish to use this waiver should, in consultation with the loan recipient, determine the costs of all items to be supplied or installed in the project. The contractor must thereafter retain relevant documentation (i.e., invoices) for each of these items in their project files, and must summarize in reports to the loan recipient the total cost of all items supplied or installed in the project, the total cost of incidental AIS components, and the calculations by which they determined the percentage of incidental items supplied or installed.

AIS Recordkeeping

Records must include a list of products that must be American Iron and Steel as determined by the loan recipient and engineer, the contractor's AIS Initial Certification Statement, individual product AIS certifications, and the contractor's AIS Final Certification Statement. If the contractor uses the De Minimis Waiver to exempt miscellaneous or incidental products, that list and relevant calculations to demonstrate the percentages claimed as de minimis products must also be included in the contractor's and owner's AIS records. All certifications must be collected and maintained by the loan recipient and be available for examination by CWFAP, EPA, or the Inspector General's office upon request.

Inadequate documentation may result in part or all of the assistance funding being forfeited by the loan recipient. The loan recipient should not pay for any AIS component until an adequate certification is received. The VCWRLF may withhold any reimbursements if the loan recipient does not maintain adequate documentation of compliance with AIS requirements.